

SECTION-BY-SECTION ANALYSIS OF THE COMMITTEE PRINT

Section 1. Short Title; Table of Contents.

Section 1 contains the short title of the bill, “The Federal Housing Enterprise Regulatory Reform Act of 2005.”

Section 2. Definitions.

Section 2 contains definitions of terms that are used in the bill.

1. A “regulated entity” means the Federal National Mortgage Association and any affiliate thereof; the Federal Home Loan Mortgage Corporation and any affiliate thereof; and any Federal Home Loan Bank.
2. A “default” means, with respect to a regulated entity, any adjudication or other official determination by any court of competent jurisdiction, or the Agency, pursuant to which a conservator, receiver, limited-life regulated entity, or legal custodian is appointed for a regulated entity.
3. “In danger of default” means a regulated entity with respect to which, in the opinion of the Agency, the regulated entity is not likely to be able to pay the obligations of the regulated entity in the normal course of business; or the regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and there is no reasonable prospect that the capital of the regulated entity will be replenished.
4. The “authorizing statutes” are the Federal National Mortgage Association Charter Act; the Federal Home Loan Mortgage Corporation Act; and the Federal Home Loan Bank Act.
5. The “Board” is the Federal Housing Enterprise Board.
6. An “entity-affiliated party” is any director, officer, employee, or controlling stockholder of, or agent for, a regulated entity; any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity; any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if the independent contractor knowingly or recklessly participates in any violation of any law or regulation; any breach of fiduciary duty; or any unsafe or unsound practice; and such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity; and any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity. The term also includes the Finance Facility. A member of a Federal Home Loan Banks shall not be considered deemed to have participated in the affairs of a Bank solely by virtue of being a shareholder of, and obtaining advances from, that Bank.

7. The “Agency” is the Federal Housing Enterprise Regulatory Agency.
8. The “Finance Facility” is the Federal Home Loan Bank Finance Facility.
9. A “limited-life regulated entity” is an entity established by the Agency under section 1367(i); with respect to a Federal Home Loan Bank in default, or in danger of default; or with respect to an enterprise in default or danger of default.
10. A “violation” includes any action (alone or in combination with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.
11. Defines the terms “Agency,” “Director,” “enterprise,” and “regulated entity” as stand-alone terms for the purposes of the bill.

TITLE I—REFORM OF REGULATION OF ENTERPRISES

Subtitle A—Improvement of Safety and Soundness Supervision

Section 101. Establishment of the Federal Housing Enterprise Regulatory Agency.

Section 101 creates the Federal Housing Enterprise Regulatory Agency (the “Agency”), which shall be an independent agency of the Federal Government. The Director of the Agency shall have general regulatory authority over Fannie Mae, Freddie Mac and the Federal Home Loan Banks (the “regulated entities”) and shall exercise such authority to ensure that the purposes of the 1992 Act, the authorizing statutes and any other provision of applicable law are carried out.

The Director of the Agency shall be appointed by the President and confirmed by the Senate. The Director shall have a 6-year term and may be removed before the end of such term for cause by the President.

The Agency shall have three divisional Deputy Directors. The Director shall appoint each Deputy Director and prescribe the applicable powers. There will be: (i) a Deputy Director of the Division of Enterprise Regulation, who shall have a demonstrated understanding of financial management or oversight, and a demonstrated understanding of mortgage securities markets and housing finance; (ii) a Deputy Director of the Division of Federal Home Loan Bank Regulation, who shall have a demonstrated understanding of financial management or oversight, and a demonstrated understanding of the Federal Home Loan Bank system and housing finance; and (iii) a Deputy Director for Housing Mission and Goals, who shall have a demonstrated understanding of the housing markets and finance.

Section 101 provides that in the event that the Director is incapacitated and cannot serve, then the President shall designate one of the Deputy Directors to serve as acting Director until

the return of the Director or the appointment of a successor.

Section 102. Duties and authorities of director.

Section 102 outlines the principal duties of the Director, without limiting the Director's general regulatory authority under Section 101. The duties of the Director include: overseeing the prudential operations of each regulated entity; ensuring that each regulated entity operates in a safe and sound manner (including maintenance of adequate capital and internal controls); ensuring that the operations and activities of each regulated entity foster liquid, efficient, resilient and competitive national housing financial markets; and ensuring that each regulated entity complies with applicable law, and operates in a manner consistent with the public interest. The Director is further charged with ascertaining that the Banks meet the needs of community lenders in supporting small farms and businesses.

The scope of the Director's authority includes review and approval of any transfer of significant ownership of a controlling interest of a regulated entity and such incidental powers as may be necessary to fulfill his duties and responsibilities. Section 102 also gives the Director independent litigation authority and provides that the Director may be subject to suit by a regulated entity or director or officer thereof. The Director shall have legislative bypass. Finally, as the Director deems appropriate, he may delegate to officers and employees of the Agency any of his powers or duties.

Section 103. Federal Housing Enterprise Board.

Section 103 establishes the Federal Housing Enterprise Board, which shall advise the Director on overall strategies and policies. The Board shall not exercise any executive authority, and the Director is prohibited from delegating any functions, powers or duties to the Board. The Board will consist of four members: the Secretary of Treasury; the Secretary of HUD, the Chairman of the SEC; and the Director, who shall also serve as chairman of the Board. The Board shall meet at least once every 3 months. In addition, any Board member shall have the authority to call a special meeting.

In order to promote accountability, the Board shall testify before the Congress on an annual basis. The Board's testimony will address the following topics: the safety and soundness of the regulated entities; any material deficiencies in the conduct of the operations of the regulated entities; an evaluation of the performance of the regulated entities in carrying out their mission; the operations, resources and performance of the Agency; and such other matters relating to the Agency as the Board determines appropriate. Section 103 also amends provisions in the 1992 Act by requiring the Director's annual report to Congress to contain assessments by the Board or any of its members, with respect to the elements described in the preceding sentence.

Section 104. Authority to require reports by regulated entities.

Section 104 expands provisions in the 1992 Act, which require the enterprises to make certain reports to the Director, to include reports by the regulated entities. Section 104 also broadens the type of reports that the Director can require to include regular reports on the financial condition (including financial statements determined on a fair value basis), management, activities, or operations of the regulated entity, as the Director considers appropriate.

Section 104 creates a monetary penalty for the failure to make, obtain, transmit, or publish any report or information required by the Director.

Sec. 105. Examiners and accountants.

Section 105 expands provisions in the 1992 Act, which grant the Director examination authority over the enterprises, to include examination authority over the regulated entities. The bill permits appointment of accountants, economists, examiners and specialists in financial markets and in technology under excepted service rules. This section also creates an Inspector General for the Agency who will be confirmed by the Senate.

Section 106. Assessments.

Section 106 creates a funding mechanism for the new regulator which would operate outside of the congressional appropriations process. The Director would have the authority to collect annual assessments from the regulated entities in order to cover all of the costs and expenses of the Agency. The Director would be permitted to collect amounts in excess of the actual expenses for a fiscal year in order to have funds on hand to deal with contingencies. For example, such funds could be used to cover the costs of special exams which were not foreseen in the development of the Agency's budget for that year. Section 106 would also allow the Director to make immediate assessments, as necessary, that would result from increased regulatory or administrative costs when a regulated entity is not adequately capitalized or as the result of supervisory or enforcement activities under Subtitle B or C.

The Director would have the authority to adjust assessments so that any costs directly attributable to enforcement actions against any regulated entity are charged only to that regulated entity. In addition, to the extent that the Director determines the Agency has excess funds in any particular year, the Director may return such funds to the regulated entities.

Sec. 107. Regulations and orders.

Section 107 provides the Director the authority to issue any regulations, guidelines or orders that are necessary to carry out the duties of the Director and to ensure that the purposes of this Act and the authorizing statutes are accomplished.

Section 108. Prudential Management and Operations Standards.

Section 108 allows the Director to establish, standards for each regulated entity, relating to: (1) adequacy of internal controls and information systems; (2) independence and adequacy of internal audit systems; (3) management of interest rate risk; (4) management of market risk; (5) adequacy and maintenance of liquidity and reserves; (6) management of asset and investment portfolio growth; (7) investments and acquisitions of assets by a regulated entity to ensure consistency with authorizing statutes; (8) overall risk management; and (9) such other operational and management standards as determined to be appropriate.

Section 109. Portfolio Holdings.

Section 109 directs the Director to establish criteria, by regulation, regarding the assets that an enterprise may hold, consistent with the statutory missions of the enterprises and this section. The bill requires the Director to consider the safe and sound operations of the enterprises and the systemic risk posed by the size and nature of the holdings of the enterprises. Section 109 details permissible asset holdings, which include: (1) mortgages and mortgage-backed securities for the purpose of securitization; (2) mortgages acquired to meet affordable housing goals; (3) a limited inventory of mortgages solely for the purpose of supporting the guarantee business; (4) cash; (5) real estate acquired through foreclosure; (6) United States Treasury securities (held for liquidity purposes); and (7) real estate, intellectual property, fixtures and equipment for use in the business operations of the enterprise.

Section 109 allows the Director to make, by order, temporary adjustments to the criteria established in this section. Section 109 also requires each regulated entity to submit to the Director a plan, for the Director's approval, for the disposition of assets other than those approved in this section. The Director is authorized to permit the MBS investment portfolio to amortize over time.

Section 110. Risk-based capital test for enterprises and requirements to enhance capital strength, disclosure, and market discipline.

Section 110 directs the Director to establish risk-based capital standards by regulation for each of the enterprises. The standards are intended to ensure that the enterprises operate in a safe and sound manner with sufficient capital and reserves to support the risks that arise in the operations and management of each enterprise. The Director may also establish a minimum capital level for a regulated entity that is higher than the level specified in Section 1362(a).

Section 111. Required Registration under the Securities Laws.

Section 111 requires the regulated entities to register a class of capital stock with the SEC under the Securities Exchange Act of 1934. Further, the enterprises are required to comply with Sections 14 and 16 of the Securities Exchange Act of 1934.

Section 112. Limit on Golden Parachutes.

Section 112 allows the Agency to prohibit or limit, by regulation or order, any golden parachute or indemnification payment received, under certain circumstances, by any entity-affiliated party after a regulated entity becomes insolvent, was determined to be in a troubled condition, or following the appointment of a conservator or receiver. Prohibits payments made in contemplation of insolvency, or to deprive creditors of payment.

Section 113. Reporting of Fraudulent Loans.

Section 113 mandates the Director to, by regulation, require any regulated entity to submit a timely report on the discovery of the purchase or sale of a fraudulent loan. The Director shall also require each regulated entity to establish and maintain procedures designed to discover such transactions.

Subtitle B—Improvement of Mission Supervision

Section 121. Transfer of program approval and housing goal oversight.

Section 121 relieves the Secretary of Housing and Urban Development of the duty of possessing general regulatory power over each enterprise and the duty of making rules and regulations necessary to the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act.

Section 122. Review of enterprise products.

Section 122 requires each enterprise to obtain the approval of the Director for any new product (as defined in the bill) before initially offering the product. In approving a new product, the Director shall make a determination that the new product is: authorized by the applicable authorizing statute; in the public interest; consistent with safety and soundness of the enterprise or the mortgage finance system; and does not impair the stability or competitiveness of the mortgage finance system.

Each enterprise shall submit to the Director a written request for approval of a product that describes the product in such form as prescribed by order or regulation of the Director. Immediately upon receipt of a request for approval of a product, the Director shall publish notice of such request and of the 30-day period for public comment regarding the product, and a description of the product proposed by the request. The Director shall give interested parties the opportunity to respond in writing to the proposed product. Not later than 30 days after the close of the public comment period, the Director shall approve or deny the product, specifying the grounds for the decision in writing. If the Director fails to act within 30 days, the enterprise may offer the product.

Section 122 allows for the expedited review of any new activity, service, or offering that

is not a product, dependent upon the enterprise providing written notice to the Director prior to the commencement of such activity, service or offering.

The Director may also conditionally approve the offering of any product by an enterprise, and may establish terms, conditions, or limitations with respect to such product with which the enterprise must comply in order to offer such product.

The term “product” does not include: the automated underwriting system in existence as of the date of enactment (including upgrades to operate the system); or any modification to the mortgage terms and conditions or mortgage underwriting criteria relating to mortgages purchased or guaranteed by an enterprise (provided that such modifications do not alter the underlying transaction so as to include services or financing, or create new significant risk exposure for the enterprise or the holder of the mortgage).

Nothing in this section in any way limits the Director’s ability to block the offering or any new or existing product for safety and soundness or mission compliance purposes.

Section 123. Monitoring and enforcing compliance with housing goals.

Section 123 transfers monitoring and enforcement of the GSE’s existing affordable housing goals to the Director of the Federal Housing Enterprise Regulatory Agency.

Section 124. Assumption by Director of other HUD responsibilities.

With the exception of Fair Housing enforcement, which remains at HUD, section 124 transfers all other existing HUD authority over the housing government sponsored enterprises to the Director of the Federal Housing Enterprise Regulatory Agency. These authorities include, but are not limited to, providing public access to enterprise mortgage purchase data, preparation of an annual housing report, and defining terms to be used in setting the housing goals of the government sponsored enterprises.

Section 125. Administrative and judicial enforcement proceedings.

Section 125 transfers HUD’s enforcement authority for the GSE’s existing affordable housing goals to the Director of the Federal Housing Enterprise Regulatory Agency. These enforcement provisions include existing authority and requirements over cease-and-desist proceedings, hearings, judicial review, civil money penalties, subpoena authority and the general regulatory authority to enforce the housing goals.

Section 126. Conforming loan limits.

Section 126 sets conforming loan limits and requires the Agency to make annual adjustments to the limits based on increases or decreases in a housing price index maintained by

the Agency. The Director is required to establish, by regulation, and maintain a method of assessing the national average single-family housing price for use in adjusting the conforming loan limitations of the enterprises.

Subtitle C—Prompt Corrective Action

The prompt corrective action authorities of FHERA would apply to the Federal Home Loan Bank System, Fannie Mae and Freddie Mac.

Section 141. Capital classifications.

Section 141 modifies the Director’s authority to reclassify a regulated entity to a lower capital classification. The Director may reclassify an entity if the entity is engaging in conduct that could result in a rapid depletion of core capital, or if the Director determines that the value of the property underlying the mortgages held or securitized by the enterprise or the value of the collateral pledged as security, has decreased significantly. In addition, the Director may reclassify a regulated entity, after notice and an opportunity for a hearing, if the regulated entity is in an unsafe or unsound condition or if the regulated entity is engaging in an unsafe or unsound practice. The regulated entity would not be allowed to make a capital distribution if, after making the distribution, the regulated entity would be undercapitalized. The Director may grant an exception for the regulated entity to repurchase, redeem, retire, or otherwise acquire shares or obligations of the regulated entity if that action is made in connection with the issuance of additional shares or obligations in at least an equivalent amount which would reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the regulated entity.

Section 142. Supervisory actions applicable to undercapitalized regulated entities.

Section 142 strengthens the Director’s authorities for supervising undercapitalized entities, including restrictions on asset growth and approval of new activities. An undercapitalized entity is not permitted to increase its assets from quarter to quarter unless the Director had accepted its capital restoration plan, such growth was consistent with the plan and the regulated entity’s ratio of tangible equity to assets increased during the quarter sufficient to become adequately capitalized within a reasonable time. An undercapitalized entity could not directly or indirectly acquire an interest in any entity, or engage in any new activity, unless the Director had accepted its capital restoration plan and the Director determined that the acquisition was consistent with and furthered the achievement of the capital restoration plan.

Section 142 also requires the Director to reclassify an “undercapitalized entity” as being “significantly undercapitalized” if the entity does not submit a capital restoration plan or if the entity is not making good faith efforts to comply with such a plan. This action is discretionary under current law. Finally, Section 142 authorizes the Director to take any of the actions authorized to be taken with respect to a significantly undercapitalized entity if the Director

determines that such actions are necessary to carry out the purposes of the Subtitle C (prompt corrective action).

Section 143. Supervisory actions applicable to significantly undercapitalized regulated entities.

Section 143 amends current law to require the Director to take one or more supervisory actions which the regulator has discretion to take under current law. These actions include the following: improving management of the regulated entity; limiting the increase, or order the reduction, of the regulated entity's obligations, including off-balance sheet obligations; limiting asset growth; acquiring new capital and; restricting activities that create excessive risk. Executives of any significantly undercapitalized regulated entity may not receive bonuses or an increase in pay without written approval of the Director.

Section 144. Authority over critically undercapitalized regulated entities.

Section 144 provides the Director with the authority to appoint a conservator or a receiver for a critically undercapitalized entity under the following grounds:

- substantial dissipation of assets or earnings due to any violation of any provision of Federal or State law or any unsafe or unsound practice;
- the regulated entity is in an unsafe or unsound condition to transact business;
- the regulated entity commits a willful violation of a final cease-and-desist order;
- any concealment of the books, papers, records, or assets of a regulated entity, or any refusal to submit same for inspection to any examiner or agent of the Director;
- the regulated entity is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business;
- the regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized;
- any violation of law or regulation, or any unsafe or unsound practice of condition that is likely to cause insolvency or substantial dissipation of assets or earnings or to weaken the condition of the entity;
- the regulated entity, by resolution of its board of directors or its shareholders or members, consents to the appointment;
- the regulated entity is critically undercapitalized or is undercapitalized or significantly undercapitalized and has no reasonable prospect of becoming adequately capitalized or fails to become adequately capitalized; fails to submit a capital restoration plan or materially fails to implement such a plan;
- the Attorney General notifies the Director in writing that the regulated entity has been found guilty of money laundering.

The authorities and responsibilities granted to the Agency to act as conservator or receiver are substantially similar to those of the Federal Deposit Insurance Corporation (FDIC).

This bill requires the Director to appoint the Agency as receiver for a regulated entity if the assets of the regulated entity are, and during the preceding thirty calendar days have been, less than its obligations; or the regulated entity is not, and during the preceding thirty calendar days has not been, generally paying its debts as they become due.

In the event of an appointment of conservator or receiver, the regulated entity may bring an action in the U.S. States District Court for the judicial district in which the home office of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver. The members of the board of directors of an enterprise will not be liable to the shareholders or creditors of the regulated entity for supporting the appointment of conservator or receiver.

The Agency may prescribe regulations regarding the conduct of conservatorships or receiverships. The Agency will succeed to the powers of the regulated entity and any stockholder, officer, or director of the regulated entity. When acting as conservator or receiver, the Agency will not be subject to the power of any other agency.

The Agency, acting as a conservator or receiver, may exercise all powers and authorities granted to a conservator or receiver under this section, as well as such incidental powers necessary to carry out such powers. As a conservator or receiver, the Agency may, take over the assets of, and operate, the regulated entity; collect all obligations and money due the regulated entity; perform all functions of the regulated entity which are consistent with the appointment as conservator or receiver; preserve the assets and property of such regulated entity and; provide by contract for fulfilling any function, activity, action or duty of the Agency as conservator or receiver. As a receiver, the Agency may place a regulated entity in liquidation and realize upon the assets of the entity. As a receiver for an enterprise, the Agency shall also organize a successor enterprise. The Agency may, as conservator or receiver, transfer, or sell any asset or liability of the regulated entity in default without any approval, assignment, or consent with respect to such transfer or sale.

The Agency may, as conservator or receiver, pay all valid obligations of the regulated entity that are due and payable at the time of appointment of a conservator or receiver, to the extent of proceeds realized from the performance of contracts or sale of the assets of the regulated entity.

The appointment of the Agency as receiver for a regulated entity shall terminate all rights and claims that the stockholders and creditors of the regulated entity may have against the assets or charter of the regulated entity or the Agency arising as a result of their status as stockholders or creditors, except for their right to payment, resolution or other satisfaction of their claims as the Director deems funds available from the assets of the regulated entity.

The bill clarifies that the charter of a regulated entity shall not be considered an asset of the regulated entity in receivership.

The Agency may, as receiver, determine claims. The Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and provide for administrative determination of claims.

After the appointment of a conservator, the regulated entity may request a stay for no longer than 45 days. After the appointment of a receiver, the regulated entity may request to stay for no longer than 90 days. The court will grant such stays to all entities. In the event of any appealable judgment, the Agency as conservator or receiver shall have all the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency.

In exercising any right as conservator or receiver, the Agency will conduct its disposition of assets of a regulated entity in a manner which: maximizes the net present value return from the sale or disposition of such assets; minimizes the amount of any loss realized in the resolution of cases; and ensures adequate competition and fair and consistent treatment of offerors.

This bill clarifies that any mortgage, pool of mortgages, or interest in a pool of mortgages held in trust, custodial, or agency capacity by an enterprise (for the benefit of a person other than the enterprise) shall not be available to satisfy the claims of creditors generally.

The conservator or receiver may disaffirm any contract or lease to which the regulated entity is a party if the performance is burdensome or if the disaffirmance will promote the orderly administration of the affairs of the enterprise.

This bill conforms the treatment of qualified financial contracts to those authorities exercised by the FDIC acting as conservator or receiver and also conforms the definitions of such terms as “security contract”, “commodity contract” and “forward contract”, among others, to those definitions incorporated in the Bankruptcy Code as a result of the recent enactment of bankruptcy reform legislation..

This bill sets the maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the regulated entity as the amount that the claimant would have received if the Agency had liquidated the assets and liabilities of the regulated entity.

If a receiver is appointed for a Bank, the bill authorizes the Agency to organize a limited-life regulated entity with the powers and attributes of the Bank in default or in danger of default. If a receiver is appointed for an enterprise, the bill requires the Agency to organized a limited-life regulated entity which shall succeed to the charter of the enterprise in receivership and operate subject to that charter.

In the case of an enterprise, the Agency may issue capital stock or other securities of a limited-life regulated entity. Upon sale by the Agency of 80 percent or more of the capital stock, the status of the limited-life regulated entity terminates and the Agency must sell the remainder

of the stock within a one-year period. The Director may extend the one-year period for up to two years if the Director determines that such action would be in the public interest.

To fund its ongoing operations, the limited-life regulated entity may obtain unsecured credit and issue unsecured debt. The Director may authorize the limited-life regulated entity to issue debt which: has priority over any or all of the other obligations; secured by a lien on property that is not otherwise subject to a lien or; is secured by a junior lien on property that is subject to a lien.

This bill prohibits the receiver from revoking, annulling, or terminating the charter of an enterprise. In the case of a Bank, the receiver retains the authority to do so.

Subtitle D—Enforcement Actions

Section 151. Cease-and-desist proceedings.

The Director may issue cease-and-desist orders to a regulated entity or an entity-affiliated party for: unsafe or unsound practices; violations of law, rule, regulation, or order, or any condition imposed in writing; or for an unsatisfactory examination rating for credit risk, market risk, operations, or corporate governance.

Section 152. Temporary cease-and-desist proceedings.

In the event that the Director determines that a regulated entity is likely to become insolvent or experience a significant dissipation of assets or earnings as a result of the unsafe or unsound practice, violation or unsatisfactory rating, the Director may issue a temporary cease-and-desist order and require that the regulated entity or entity-affiliated party take action to prevent or remedy such insolvency.

Section 153. Removal and prohibition authority.

Specifies the circumstances under which, and the process whereby, the Director may suspend or remove an entity-affiliated party or any officer or director of the Finance Facility. Provides that a party subject to a removal or suspension order is prohibited performing certain identified activities. A person who has been removed or suspended may not participate in the conduct of the affairs of another regulated entity while such order is pending, unless the Director gives written consent.

Section 154. Enforcement and jurisdiction.

The Director may apply to the appropriate district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice, order or subpoena, or request the Attorney General to bring such an action.

Section 155. Civil money penalties.

Section 155 specifies three tiers of fines: 1) \$10,000 per day for violations of this law, regulations, orders, agreements or unsafe and unsound conduct. 2) \$50,000 per day for certain patterns of misconduct that cause significant damage and result in financial gain to the individual, and 3) up to a maximum of \$2 million for knowingly engaging in violations, breaches of fiduciary duties, or unsafe or unsound practices that cause substantial losses to a regulated entity and result in financial gain to the individual.

Section 156. Criminal penalty.

Anyone who participates directly or indirectly in the affairs of a regulated entity while under suspension or order of removal shall be liable for a fine of up to \$1 million, or five years imprisonment.

Section 157. Notice after separation from service.

Extends the agency's enforcement authority over directors and executive officers to 6 years after separation from regulated entity.

Section 158. Subpoena authority.

Grants the Director or designated staff the authority to issue subpoenas in connection with investigations, examinations or proceedings. Establishes subpoena enforcement authority and provides for criminal penalties for failure to comply with a subpoena.

Subtitle E—General Provisions

Section 171. Conforming and technical amendments.

Section 171 makes conforming and technical changes to a number of statutes to reflect the creation of the new Agency and the abolishment of OFHEO and the Federal Housing Finance Board.

Section 172. Presidentially appointed directors of enterprises.

Section 172 eliminates the presidentially-appointed directors on the enterprises' boards and fixes the number of directors at thirteen, or such other number that the Director determines appropriate.

Section 173. Effective date.

Section 173 establishes the effective date for Title I as one year following the date of enactment.

TITLE II—FEDERAL HOME LOAN BANKS

Section 201. Directors.

Section 201 eliminates the FHFB-appointed directors at the Banks and sets the number of directors at each Bank at thirteen or such other number that the Director deems appropriate. The board of each Bank must have at least a majority of “member directors,” who are directors or officers of member banks located in the relevant district, and 1/3 “independent directors,” who are residents in the relevant district. At least two of the independent directors must represent the public interest. The directors are to be elected by a plurality vote of the members.

Section 202. Definitions.

Section 202 amends section 2 of the Federal Home Loan Bank Act to add two definitions used in Title II.

1. The “Director” means the Director of the Federal Housing Enterprise Regulatory Agency.
2. The “Agency” means the Federal Housing Enterprises Regulatory Agency.

Section 203. Federal Housing Enterprise Regulatory Agency oversight of Federal home loan banks.

Federal Home Loan Banks will be placed within the jurisdiction of the Federal Housing Enterprise Regulatory Agency. The Federal Housing Enterprise Regulatory Agency will assume the duties of the Federal Housing Finance Board. This section authorizes the Finance Facility to issue consolidated Federal Home Loan Bank debt, which shall be the joint and several obligations of all of the Federal Home Loan Banks.

Section 204. Debt Finance Facility.

Section 204 creates the Federal Home Loan Bank Finance Facility to assume the duties and responsibilities currently held by the Office of Finance of the Federal Home Loan Bank System. The Finance Facility will be an entity jointly-owned by the Banks. The Finance Facility will be governed by a management board comprised of the presidents of each of the Banks. The Finance Facility will be subject to regulation by the Director.

Sec. 205. Securities and Exchange Commission disclosure.

Section 205 exempts the Federal Home Loan Banks from certain provisions of, and regulations enacted thereunder, the Securities Exchange Act of 1934, including certain periodic

reporting requirements regarding the disclosure of transactions and the disclosure of unregistered sales of equity securities. The SEC's tender offer rules shall not apply to the capital stock transactions of the Federal Home Loan Banks, and the proxy rules shall not apply. Further, in drafting final regulations regarding registration, the SEC shall consider distinctive characteristics of the Federal Home Loan Banks when evaluating the accounting treatment with respect to REFCORP, the role of the combined financial statements of the Federal Home Loan Banks, the accounting classification of redeemable capital stock, and the accounting treatment related to the joint and several nature of the obligations of the Federal Home Loan Banks.

Sec. 206. Mergers.

Section 206 permits Federal Home Loan Banks to voluntarily merge with one another upon the Director's approval.

Sec. 207. Authority to Reduce Districts.

Section 207 permits the number of Banks to be reduced to a number less than 8 (the current statutory minimum number of Banks) in the case of a voluntary merger between Federal Home Loan Banks or if a Federal Home Loan Bank is liquidated pursuant to a receivership.

**TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF
OFHEO AND THE FEDERAL HOUSING FINANCE BOARD**

Subtitle A—OFHEO

Section 301. Abolishment of OFHEO.

Section 301 abolishes the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development at the end of one year following the date of enactment of this bill. No law suits commenced by, or against, the Director of the Office of Federal Housing Enterprise Oversight shall cease as a result of this Act.

Section 302. Continuation and coordination of certain regulations.

Section 302 provides for the continuation and coordination of regulations. All orders shall remain in effect and enforceable by, or against, the Director of the Federal Housing Enterprise Regulatory Agency or the Secretary of Housing and Urban Development.

Section 303. Transfer and rights of employees of OFHEO.

Section 303 clarifies that existing employees of OFHEO will be transferred to the Federal Housing Enterprise Regulatory Agency with the same status, tenure, grade and pay as held on the day immediately preceding the transfer. An employee holding a permanent position immediately preceding the transfer may not be involuntarily separated or reduced in grade or

compensation during the 12-month period beginning on the date of transfer, except for cause. The Director of the Federal Housing Enterprise Regulatory Agency may decline a transfer of authority.

Section 304. Transfer of property and facilities.

All property of the Office of Federal Housing Enterprise Oversight shall transfer to the Director of the Federal Housing Enterprise Regulatory Agency.

Subtitle B—Federal Housing Finance Board

Section 311. Abolishment of the Federal Housing Finance Board.

Section 311 abolishes the Federal Housing Finance Board, effective 1 year after enactment. This section also sets up procedures for the disposition of Board affairs, status and transfer of employees, and the use of current property and services.

Section 312. Continuation and coordination of certain regulations.

Section 312 provides for the continuation and coordination of existing regulations of the Federal Housing Finance Board. The Director of the Federal Housing Enterprise Regulatory Agency would have the authority to enforce all existing regulations, orders and determinations of the Federal Housing Finance Board.

Section 313. Transfer and rights of employees of the Federal Housing Finance Board.

Section 313 provides for procedures for the transfer of employees of the Federal Housing Finance Board to the Federal Housing Enterprise Regulatory Agency. An employee holding a permanent position immediately preceding the transfer may not be involuntarily separated or reduced in grade or compensation during the 12-month period beginning on the date of transfer, except for cause.

Section 314. Transfer of property and facilities.

Section 314 transfers all property and facilities of the Federal Housing Finance Board to the Federal Housing Enterprise Regulatory Agency .

TITLE IV—Study and Reports

Section 401. Study and Report on Basel II and Enterprise Debt.

Section 401 requires the Federal Reserve to study the effects on the regulated entities of Basel II. The study shall examine the debt of the regulated entities and the capital classification

of financial institutions that hold such debt.

Section 402. Affordable Housing Audits.

Section 402 requires the Inspector General at the Agency to conduct an annual audit of the affordable housing activities of the enterprises to ensure that such activities support the affordable housing mission.

Section 403. Report on Insured Depository Institution Holdings of Regulated Entity Debt and Mortgage-backed Securities.

Section 403 requires the Director, the Federal Reserve Board, the FDIC Board and the National Credit Union Association Board to submit a joint report to Congress within two years of enactment regarding the amount of mortgage-backed securities held by federally insured depository institutions, the systemic risks associated with such holdings, the effects of a limitation on the holdings of federally insured depository institutions and the extent to which alternative investments are available to community depository institutions.

Section 404. Report on Risk-Based Capital Levels.

Section 404 requires the Director to submit a quarterly report to Congress on the risk-based capital levels for the regulated entities, including a description of the factors used to determine the risk-based level, and the minimum and critical capital levels.

Section 405. Resources and Allocations.

Section 405 requires the GAO to submit an annual report to Congress regarding the allocation of the Agency's resources by the Director and the level of assessments collected for the operation of the Agency.

Section 406. Study and Report on Guarantee Fees.

Section 406 requires the Director to study the fees that an enterprise charges for guaranteeing a mortgage. The Director shall, by regulation or order, establish the requirements regarding the data to be provided, format of disclosure and the process for collecting such data. The Director shall report annually to Congress on an aggregated basis regarding the amount of such fees and the criteria used by the enterprises to determine such fees.

Section 407. Study and Report on Debt and Mortgage-Backed Securities Registration under the Securities Act of 1933.

Section 407 requires the Agency, the Securities and Exchange Commission and the Department of Treasury to jointly examine registration of the regulated entities' debt securities,

and mortgage-backed securities and equities in the case of the enterprises, with the Securities and Exchange Commission under the Securities Act of 1933. Such study shall consider how the registration requirements under the Securities Act of 1933 would apply to the regulated entities, the enhanced disclosures deriving from registration, the impact of registration on the regulated entities' debt issuance practices, costs of compliance and the impact of registration on the operation of the national debt and mortgage markets. A report shall be submitted to the Committee on Banking, Housing and Urban Affairs within eighteen months following the date of enactment.

Section 408. Recommendations.

Each report submitted pursuant to Title IV shall include specific recommendations, if any, of appropriate policies, limitations, regulations, legislation or other actions to deal appropriately and effectively with the issues addressed by such report.